

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TOMY INTERNATIONAL, INC.	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:13-cv-07022
	)	
GREENBRIER INTERNATIONAL,	)	
INC.	)	
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff TOMY International, Inc. files this Complaint and demands for jury trial seeking relief for patent infringement by Defendant Greenbrier International, Inc. Plaintiff alleges and states the following.

**NATURE OF LAWSUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**THE PARTIES**

2. Plaintiff TOMY International, Inc. (“Plaintiff” or “TOMY”) is a corporation organized and existing under the laws of the State of Delaware. Plaintiff’s principal place of business is located at 2015 Spring Road, Oak Brook, Illinois 60523. Plaintiff is in the business of making and selling, among other things, feeding products for newborns, infants and toddlers. TOMY is the assignee and the owner of the patents involved in this lawsuit.

3. Defendant Greenbrier International, Inc., (“Defendant” or “Greenbrier”) is a corporation organized and existing under the laws of the Commonwealth of Virginia.

Defendant's principal place of business is located at 500 Volvo Parkway, Chesapeake, VA 23320.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant Greenbrier because Greenbrier has transacted business within this judicial district and therefore has substantial and continuous contacts with this judicial district; because Greenbrier has purposefully availed itself of the privileges of conducting business in this judicial district; and because Greenbrier has committed acts of patent infringement in this judicial district.

6. Venue properly lies within this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Defendant Greenbrier has conducted business in this district and committed acts of patent infringement within this judicial district.

### **COUNT I – PATENT INFRINGEMENT OF U.S. PATENT NO. 6,976,604**

7. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs 1-6 as though fully set forth herein.

8. On December 20, 2005, United States Patent No. 6,976,604 (“the ’604 patent”) entitled “Restricting Flow in Drinking Containers” was duly and legally issued to inventors James A. Connors, Jr., David E. Medeiros and George S. Dys. TOMY is the owner by assignment of the ’604 patent. Attached as Appendix A is a true and correct copy of the ’604 patent.

9. Defendant Greenbrier has infringed and continues to infringe the '604 patent by making, using, selling and offering to sell and importing the infringing Greenbrier products, including products bearing the Greenbrier name such as the Trainer Cup, 5 Pack.

10. By making, using, selling and offering to sell and importing infringing products, Greenbrier has infringed the '604 patent directly, contributorily and/or through inducement. Greenbrier has engaged in the foregoing conduct in the United States without authority from Plaintiff and during the term of the '604 patent.

11. Upon information and belief, Greenbrier will continue to infringe the '604 patent unless and until it is enjoined by this Court.

12. Greenbrier has caused and will continue to cause Plaintiff irreparable injury and damage by infringing the '604 patent. Plaintiff will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Greenbrier is enjoined from infringing the '604 patent.

**COUNT II – PATENT INFRINGEMENT OF U.S. PATENT NO. 7,185,784**

13. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs 1-12 as though fully set forth herein.

14. On March 6, 2007, United States Patent No. 7,185,784 (“the '784 patent”) entitled “Drinking Containers” was duly and legally issued to inventors James A. Connors, Jr., David E. Medeiros, George S. Dys, James J. Britto, and John A. Hession. TOMY is the owner by assignment of the '784 patent. Attached as Appendix B is a true and correct copy of the '784 patent.

15. Defendant Greenbrier has infringed and continues to infringe the '784 patent by making, using, selling and offering to sell and importing the infringing Greenbrier products, including products bearing the Greenbrier name such as the Trainer Cup, 5 Pack.

16. By making, using, selling and offering to sell and importing infringing products, Greenbrier has infringed the '784 patent directly, contributorily and/or through inducement. Greenbrier has engaged in the foregoing conduct in the United States without authority from Plaintiffs and during the term of the '784 patent.

17. Upon information and belief, Greenbrier will continue to infringe the '784 patent unless and until it is enjoined by this Court.

18. Greenbrier has caused and will continue to cause Plaintiff irreparable injury and damage by infringing the '784 patent. Plaintiff will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Greenbrier is enjoined from infringing the '784 patent.

**COUNT III – PATENT INFRINGEMENT OF U.S. PATENT NO. 8,286,826**

19. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs 1-18 as though fully set forth herein.

20. On October 16, 2012, United States Patent No. 8,286,826 (“the '826 patent”) entitled “Drinking Containers” was duly and legally issued to inventors James A. Connors, Jr., David E. Medeiros, George S. Dys, James J. Britto, and John A. Hession. TOMY is the owner by assignment of the '826 patent. Attached as Appendix C is a true and correct copy of the '826 patent.

21. Defendant Greenbrier has infringed and continues to infringe the '826 patent by making, using, selling and offering to sell and importing the infringing Greenbrier products, including products bearing the Greenbrier name such as the Trainer Cup, 5 Pack.

22. By making, using, selling and offering to sell and importing infringing products, Greenbrier has infringed the '826 patent directly, contributorily and/or through inducement.

Greenbrier has engaged in the foregoing conduct in the United States without authority from Plaintiff and during the term of the '826 patent.

23. Upon information and belief, Greenbrier will continue to infringe the '826 patent unless and until it is enjoined by this Court.

24. Greenbrier has caused and will continue to cause Plaintiff irreparable injury and damage by infringing the '826 patent. Plaintiff will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Greenbrier is enjoined from infringing the '826 patent.

**COUNT IV – PATENT INFRINGEMENT OF U.S. PATENT NO. 8,540,112**

25. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs 1-24 as though fully set forth herein.

26. On September 24, 2013, United States Patent No. 8,540,112 (“the '112 patent”) entitled “Drinking Containers” was duly and legally issued to inventors James A. Connors, Jr., David E. Medeiros, George S. Dys, James J. Britto, and John A. Hession. TOMY is the owner by assignment of the '112 patent. Attached as Appendix D is a true and correct copy of the '112 patent.

27. Defendant Greenbrier has infringed and continues to infringe the '112 patent by making, using, selling and offering to sell and importing the infringing Greenbrier products, including products bearing the Greenbrier name such as the Trainer Cup, 5 Pack.

28. By making, using, selling and offering to sell and importing infringing products, Greenbrier has infringed the '112 patent directly, contributorily and/or through inducement. Greenbrier has engaged in the foregoing conduct in the United States without authority from Plaintiffs and during the term of the '112 patent.

29. Upon information and belief, Greenbrier will continue to infringe the '112 patent unless and until it is enjoined by this Court.

30. Greenbrier has caused and will continue to cause Plaintiff irreparable injury and damage by infringing the '112 patent. Plaintiff will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Greenbrier is enjoined from infringing the '112 patent.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter a judgment in TOMY's favor and against Defendant Greenbrier and provide Plaintiff the following relief:

- A. Order, adjudge and decree that Defendant Greenbrier has infringed the '604 patent, the '784 patent, the '826 patent and the '112 patent in violation of 35 U.S.C. § 271(a), (b), and (c);
- B. Issue permanent injunctive relief prohibiting Defendant Greenbrier and its respective parents, subsidiaries, principals, officers, directors, agents, attorneys, employees, and all others in privity with it from infringing the '604 patent, the '784 patent, the '826 patent and the '112 patent, pursuant to 35 U.S.C. § 283;
- C. Award Plaintiff its damages for patent infringement and prejudgment interest and costs against Defendant Greenbrier pursuant to 35 U.S.C. § 284; and
- D. Award such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff requests a trial by jury on all issues appropriately triable by a jury.

Dated this 30th day of September, 2013.

WHYTE HIRSCHBOECK DUDEK S.C.  
Attorneys for Plaintiff

By: s/ Thomas P. Heneghan  
Thomas P. Heneghan  
IL Bar No. 6201292  
Benjamin W. Dyer  
WI Bar No. 1090053

**ADDRESS:**  
161 N. Clark St.  
Suite 4700  
Chicago, IL 60601-3206

33 East Main Street  
Suite 300  
P.O. Box 1379  
Madison, Wisconsin 53701-1379  
608-234-6032  
608-258-7138 (fax)  
[theneghan@whdlaw.com](mailto:theneghan@whdlaw.com)